

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 384 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? NO.

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2. To be referred to the Reporter or not? NO.

3. Whether Their Lordships wish to see the fair copy
of the judgement? NO.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge?
NO.

KANUDIYA M RATHVA

Versus

STATE OF GUJARAT

Appearance:

MR.P.M.VYAS, (Appointed) for the Appellant.

MR.M.A.BUKHARI, APP, for the Respondent.

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 16/08/96

ORAL JUDGEMENT (per KADRI, J.)

This appeal under S. 374(2) of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated April 25, 1988, rendered by the learned Addl. Sessions Judge, Vadodara, in Sessions Case No. 30 of 1987, by which the appellant is convicted under S.302 of the I.P.Code and S. 135 of the Bombay Police Act, and sentenced to R.I. for life and a fine of Rs.500/- in default R.I. for 3 months under S.302 of the I.P.Code. No separate sentence is imposed for the offence under S.135 of the Bombay Police Act.

2. The prosecution case may be summarised as under: Complainant Rasikbhai Mangubhai was residing in Village Luni, Taluka Chhota Udepur, alongwith his family and parents. The appellant-accused also resided in the neighbourhood of the complainant Rasikbhai Mangubhai. Prior to the date of the incident, on the occasion of the festival of Dussera, a dispute arose between the father of the complainant and the appellant-accused with regard to plucking of 'mahuda flowers' from the three trees which belonged to the father of the complainant. After the above incident, on January 11, 1987 at about 7.0 p.m. Mangubhai who is the father of the complainant was returning from his field. The complainant and his mother Bhailiben Mangubhai were present at their house. Both of them heard hot verbal exchange between the appellant-accused and Mangubhai. On hearing the shouts of the appellant-accused and Mangubhai, the complainant and his mother Bhailiben went towards the place where the appellant-accused and Mangubhai had entered in verbal exchange. When they reached at that place, they saw the accused giving 7 to 8 blows with a sharp-edged cutting instrument called 'palia' on the neck portion of Mangubhai in quick succession. The accused inflicted 7 to 8 blows with the result that the head was chopped off from the body of deceased Mangubhai. On seeing the complainant and his mother Bhailiben, the accused-appellant ran away with the palia. Deceased Mangubhai fell down on the ground and died instantaneously. Thereafter the complainant informed police Patel of the Village, Shri Ukadiya Kalji, and in company of the police Patel, the complainant went to lodge complaint at the Chhota Udepur Police Station, which was recorded by Somabhai Bababhai Sodha, who was discharging the duties as P.S.I. of Chhota Udepur Police Station. Inquest panchnama of the dead body of deceased Mangubhai was prepared and thereafter the body was sent for autopsy at the Chhota Udepur Government dispensary. PSI Mr.Sodha prepared the panchnama of the scene of offence, collected blood-soaked earth, control earth and

the clothes put on by the deceased at the time of the incident. PSI Sodha also recorded statements of witnesses. The blood-stained clothes of the deceased and the earth were sent to Forensic Science Laboratory for analysis. The accused was arrested and while in police custody, he made a statement showing his willingness to produce the palia which was used in the commission of crime. In the presence of panchas, discovery panchnama under S.27 of the Indian Evidence Act was prepared and muddamal palia was recovered at the instance of the accused from his house. On completion of the investigation, charge-sheet under S.302 of I.P.Code was filed against the accused in the Court of the learned JMFC, who in turn committed the case for trial to the Sessions Court, as the offence under S.302 of the I.P.Code was exclusively triable by the Court of Sessions.

3. The case was registered as Sessions Case No. 30 of 1987 in the Court of the learned Addl. Sessions Judge, Vadodara. Charge Ex.2 unswe A.302 of I.P.Code was framed against the accused, which was read over and explained to him. The accused pleaded not guilty to the charge and claimed to be tried.

4. In order to prove its case, the prosecution examined following witnesses:

- (i) PW 1 Ex. 6 Dr.Krishnavallabh Anokhilal Raval
- (ii) PW 2 Ex. 10 Complainant Rasikbhai Mangubhai.
- (iii) PW 3 Ex. 12 Bhailiben Mangubhai (widow of deceased Mangubhai)
- (iv) PW 4 Ex. 21 Jagubhai F. Rathva (Panch of Discovery Panchnama)
- (v) PW 5 Ex. 23 Somabhai Bababhai Sodha.

The prosecution also relied on the documentary evidence consisting of post-mortem report, complaint, panchnama of the scene of offence, discovery panchnama prepared under S.27 of the Indian Evidence Act, report of Forensic Science Laboratory, etc.

5. After recording the evidence of prosecution, the learned Judge questioned the appellant generally on the case and recorded his statement under S.313 of the Code of Criminal Procedure, 1973. In his statement, the appellant denied the prosecution case against him. However, the appellant did not lead any evidence in defence.

6. After considering the evidence led by the

prosecution and hearing the learned Counsel for the parties, the learned Judge recorded the following conclusions :

- (i) Deceased Mangubhai died a homicidal death because of the injuries inflicted on him by the accused by means of muddamal palia.
- (ii) The evidence of the complainant and his mother Bhaliben is reliable and they had witnessed the whole incident in question. The evidence of both these eye-witnesses prove beyond doubt that the accused had brutally given blows in quick succession with the muddamal palia on the neck portion of the deceased and chopped off his head, which caused instantaneous death of the deceased.
- (iii) The identity of the accused is proved beyond doubt as the accused was known to the witnesses as he resided in their neighbourhood. The witnesses could also identify the accused as they were familiar with his voice.
- (iv) The circumstantial evidence of discovery of muddamal palia which was blood-stained at the instance of the accused also proves that the accused had used that muddamal article in committing murder of deceased Mangubhai.
- (v) The oral evidence is fully corroborated by the medical evidence of Dr.Raval, who had performed the post-mortem of the dead body of Mangubhai.
- (vi) According to the medical evidence, the injuries inflicted on the neck portion of the deceased were possible by muddamal palia.
- (vii) The appellant violated the Notification prohibiting carrying of deadly weapons and has thus committed offence under S.135 of the Bombay Police Act.

7. In view of the abovereferred to conclusions, the learned Judge convicted the appellant under S.302 of I.P.Code and S.135 of the Bombay Police Act and imposed sentence which has been referred to earlier, giving rise to the present appeal.

8. Mr.P.M.Vyas, learned Advocate who appeared for the appellant-accused as amicus curiae has tried to assail the reasoning of the learned Judge and taken

through the entire evidence led by the prosecution. He submitted that the identity of the accused was doubtful as the incident had taken place on January 11, 1987 at about 7.0 p.m. and that there is no evidence on the record to show that there was sufficient light so as to enable the eye-witnesses to identify the accused. Mr.M.A.Bukhari, 1d.APP supported the findings and conclusion of the learned Judge.

9. The argument of Mr.Vyas, that as there was no light at the time of the incident, identity of the accused by the witnesses is doubtful, is devoid of any merit. The accused-appellant was very well known to the eye-witnesses as he resided in their neighbourhood. The eye-witnesses were also familiar with the voice of the appellant-accused. Therefore, the appellant-accused was intimately known to the witnesses. The name of the appellant was at once mentioned in the F.I.R. which was lodged by the complainant at the Chhota Udepur Police Station. The witness had the opportunity of seeing the accused on many occasions from a very close distance and even if there was no sufficient light, he could have been identified by voice, by gait and by his features. People living in villages where electricity has not reached as yet, get accustomed to seeing things in night. Their eye-sight gets conditioned and becomes accustomed to the situation. There is nothing on record to indicate that the powers of seeing of the complainant were diminished by the circumstance that the incident was witnessed by him when it was twilight. It may be mentioned that the incident in question had taken place on 11.1.1987 at about 7.0 p.m. when it was twilight. Villagers are accustomed to see things in twilight, and therefore, they can easily identify the appellant-accused who was their neighbour. Previous to the incident a quarrel had taken place between the deceased and the appellant-accused with regard to plucking of 'mahuda flowers'. There is no doubt that the appellant accused was known to the complainant and his mother Bhailiben. It is not suggested to any of the witnesses that the appellant-accused had covered his face so as to make his identity not possible. Under the circumstances, the assertion of witnesses Rasikbhai Mangubhai and his mother Bhailiben that they had identified the appellant-accused as the assailant cannot be disbelief on the ground that at the time of the incident there was no sufficient light.

10. Mr.Vyas, learned Advocate for the appellant submitted that the complainant Rasikbhai and his mother Bhailiben are highly interested witnesses and therefore,

no implicit reliance can be placed on their evidence as the prosecution has not examined any independent witness present at the time of the incident. In our view, this submission of Mr.Vyas has no substance and it requires to be rejected. Merely because the eye-witnesses are related, their evidence cannot be discarded on that ground. Both the eye-witnesses have deposed in most natural way and their presence at the place of the incident cannot be doubted even for a moment. Both the witnesses reached the place of the incident on hearing the verbal exchange which had taken place between the accused and the deceased. They, at once reached the place of the incident and witnessed the accused giving blows with palia in quick succession on the neck portion the deceased. Both the witnesses had no enmity with the accused and there was no question of the accused being falsely involved in the present case. On the contrary, the complainant and Bhailiben being close relatives of the deceased, will not falsely implicate the accused in the case at the cost of letting loose the real culprit. The evidence of both the eye-witnesses also gets corroboration from the medical evidence and the circumstantial evidence. Therefore, we do not see any infirmity in the evidence of these two eye-witnesses.

11. Dr.Krishnavallabh Anokhilal Raval, PW 1, Exh.6 who performed autopsy on the dead body of Mangubhai was examined by the prosecution. The post mortem notes were produced by Dr.Raval atEx.9. According to the post-mortem notes, the deceased had sustained the following injuries:

- (i) One incised wound on neck region from left to right 6"x4"x4" cutting the skin, subcutaneous tissue, neck muscles, arteries, veins (supplying brain and head) ocsophagus trachea spinal cord at the level of 5th cervical vertebra right side of neck is not detached.
- (ii) One incised wound starting from upper side of right eyebrow upto right zygoma 5"x1/2"x1'2". Bleeding present. Right eye ball cut protruding out of the wound.
- (iii) One incised wound starting in front of left ear running obliquely upto chin 6"x1/2"x1/2".
- (iv) One C.L.W. on dorsal surface of left forearm and hand extending from lower end of left forearm upto dorsum of hand 5"x1/2"x1/2".

(v) One C.L.W. on dorsal aspect of left index finger
at the base 1"x1/2"x1/2".

(vi) One abrasion on left side of the chest over
lateral aspect of tenth rib 3" x 1/2".

In the opinion of Dr.Raval, injuries No.1 to 5 which are external injuries could be possible by muddamal palia. Dr.Raval emphatically deposed before the court that injuries no.1 to 5 were sufficient in the ordinary course of nature to cause death. Therefore, reading the evidence of Dr.Raval, it is clear that the prosecution has proved that the accused had inflicted blows on the neck of the deceased in quick succession with the intention and knowledge of causing his death.

12. The evidence of the complainant and his mother Bhailiben proves beyond reasonable doubt that on the date of the incident, the appellant-accused had verbal exchange with deceased Mangubhai and the accused had inflicted 5 to 6 blows with the muddamal palia on the neck portion of deceased with intent to kill him. Therefore, no exception can be taken to the conclusion arrived at by the learned Judge that the case under S.302 of the I.P.Code is proved against the accused.

13. The prosecution produced at Ex.39, copy of the Notification issued by the Addl. District Magistrate, Vadodara, under S.37(1) of the Bombay Police Act, 1951, prohibiting carrying of deadly weapons in the District during the period from 10.1.1987 to 22.1.1987. The offence had taken place on 11.1.1987. Admittedly the accused carried sharp-edged deadly weapon, i.e. palia during the aforesaid period, and had thus violated the notification, which is punishable under S.135 of the Bombay Police Act. Therefore, we uphold and confirm the conviction recorded by the learned Judge against the accused for the offence under S.135 of the Bombay Police Act, 1951. However, no separate sentence is passed for the said offence. As we do not find any merits in the appeal, the appeal is liable to be dismissed.

14. For the foregoing reasons, the appeal fails and is dismissed. Muddamal articles are ordered to be disposed of in terms of the directions given by the learned Judge in his impugned judgment.

abraham*

